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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
08/804,900	02/24/1997	ROBERT MECHALEY JR.	06318/005001	1485
25243	7590	07/15/2005	EXAMINER	
COLLIER SHANNON SCOTT, PLLC 3050 K STREET, NW SUITE 400 WASHINGTON, DC 20007			POINVIL, FRANTZY	
		ART UNIT	PAPER NUMBER	
			3628	

DATE MAILED: 07/15/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	08/804,900	MECHALEY ET AL.
	<b>Examiner</b>	<b>Art Unit</b>
	Frantzy Poinvil	3628

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 19 April 2005.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-8 and 28-37 is/are pending in the application.
- 4a) Of the above claim(s) 27-37 is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-8,25 and 26 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: \_\_\_\_\_

## DETAILED ACTION

### ***Response to Arguments***

1. Applicant's arguments filed 4/19/2005 have been fully considered but they are not persuasive.

### ***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-8 and 25-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Abelow (US Patent No. 5,999,908) in view of Majmudar et al (EPA 0 365 200 A3).

As per claims 1-7 and 25, Abelow is directed to a system and method of monitoring a product/service being used by a customer. A module is integrated within the product/service for monitoring usage of the product and for providing reports and market data and customer needs to a remote vendor. See column 16, lines 52-60, 9, lines 37-46 and column 10, line 3 to column 12, line 34 of Abelow. The various products/services described by Abelow include various components and subcomponents. Usage data of the product and its various components and subcomponents is collected and analyzed in order to determine future customer's needs. Abelow further teaches providing users with additional products and services

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while they are using a current product. See column 13, lines 55-58. Abelow states that "As the Customer uses the product 16, pre-programmed trigger points are checked in the CB-PD Module or by the Customer. If a trigger point has not been reached, the Customer's use is not interrupted. If a trigger point is reached, the CB-PD Module requests the Customer's participation in a Development interaction". See column 17, line 55 to column 18, line 10. Abelow further states that customers' desires are inputted by the customers only for future development and consideration. Abelow teaches alerting a customer or user on possible future availability of identified software component wherein the identified component is not within the subset of software component. Alerting the user to a [current] availability of the identified software component, wherein the identified component is not within the subset of software component is not explicitly stated by Abelow.

Majmudar teaches a telecommunication system with subscriber controlled features modification. See the title. Majmudar provides a system, which allows a user using a product/service to select features to be added to the user's current subscription. See the abstract. Once the desired features are selected, a remote central office transmits an appropriate software package containing selected features to the user. It would have been obvious to one of ordinary skill in the art at the time of the invention to incorporate the teachings of Majmudar into the system of Abelow in order to allow a user to also select additional features or the availability of an identified software component wherein the identified component is not within the subset of software components. The motivation would have been to instantly allow users to make changes

in their current usage of a product/service thereby permitting great flexibility of a product/service for better customer service and loyalty.

Collecting demographic and geographic data and threshold data are taught in the combination of Abelow and Majmudar.

As per claim 8, a user in the system of Majmudar interactively communicates by a visual communication and tactile response mechanism.

Claim 26 recites limitations contained in claim 1 and these limitations are likewise rejected. Claim 26 further includes features that the usage data pattern in an indicative of frequency of usage. As per this feature, the Examiner asserts that market analysis data usually includes usage data pattern indicative of frequency of usage or purchase of a product/service. It is noted that Abelow tracks usage data of a particular product/service. The usage data being an indicative of frequency of usage would have been obvious to one of ordinary skill in the art to do in the combination of Abelow and Majmudar in order to provide associated vendors with data that can be useful in a market analysis system so as to improve the product and/or provide better customer service.

3. Newly submitted claims 27-37 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons:

Claims 27, 33 and 36 are directed to a voice responsive system arranged to control operation of a voice responsive telephone assistant, a subject matter found in

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class, 381, subclass 110. Examining these claims would require the Examiner to perform additionally separate searches and to found new prior art since these claims are classified under a different class and subclass. Thus, such would result in a substantial burden on the Examiner if all these claims were to be examined.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 27-37 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

4. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

***Conclusion***

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Frantzy Poinvil whose telephone number is (703) 305-9779. The examiner can normally be reached on Monday-Thursday.

The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



**Frantzy Poinvil  
Primary Examiner  
Art Unit 3628**

FP  
July 9, 2005